

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEAGUE OF WOMEN VOTERS
OF MICHIGAN, et al.,

Plaintiffs,

Civil Action No. 17-cv-14148

v.

RUTH JOHNSON, in her official
capacity as Michigan Secretary of State

Hon. Eric L. Clay
Hon. Denise Page Hood
Hon. Gordon J. Quist

Defendant.

**CONGRESSIONAL AND LEGISLATIVE DEFENDANTS-INTERVENORS’
EX PARTE MOTION FOR EXPEDITED
BRIEFING ON EMERGENCY MOTION TO STAY TRIAL**

The Congressional and Legislative Defendants-Intervenors, by and through their attorneys, respectfully move this Court to order expedited briefing on their simultaneously-filed Emergency Motion To Stay Trial (“Emergency Motion”) pending the final decisions of the United States Supreme Court in *Common Cause v. Rucho* (Sup. Ct. #18-422) and *Benisek v. Lamone* (Sup. Ct. 18-726). Specifically, Defendants-Intervenors request the Court order any response to the Emergency Motion be filed within 3 days after the Court enters an order on this motion and any reply be filed within 1 day thereafter.

In support of this motion, the Defendants-Intervenors rely on the facts, law,

and argument set forth in their accompanying Brief in Support. The undersigned counsel sought concurrence to the relief requested in this motion prior to filing. Both counsel for Plaintiffs and counsel for Defendant Secretary of State concur with the specific briefing schedule requested in this motion.

WHEREFORE, the Congressional and Legislative Defendants-Intervenors respectfully request the Court grant their motion and order expedited briefing on their simultaneously-filed Emergency Motion To Stay Trial pending the final decisions of the United States Supreme Court in *Common Cause v. Rucho* (Sup. Ct. #18-422) and *Benisek v. Lamone* (Sup. Ct. 18-726).

Respectfully submitted,

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Date: January 11, 2019

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Defendant.

**BRIEF IN SUPPORT OF *EX PARTE* MOTION FOR EXPEDITED
BRIEFING ON CONGRESSIONAL & LEGISLATIVE DEFENDANTS-
INTERVENORS' EMERGENCY MOTION TO STAY TRIAL**

CONCISE STATEMENT OF THE ISSUE PRESENTED

WHETHER THE COURT SHOULD ORDER EXPEDITED BRIEFING ON DEFENDANTS-INTERVENORS' EMERGENCY MOTION TO STAY TRIAL OF THIS CASE WHERE

1) ABSENT EXPEDITED BRIEFING, THE EMERGENCY MOTION MAY NOT BECOME RIPE FOR A DECISION UNTIL FEBRUARY 1, 2019, ONLY DAYS BEFORE THE FEBRUARY 5, 2019, START OF TRIAL; AND,

2) GOOD CAUSE EXISTS TO GRANT THE EMERGENCY MOTION IN LIGHT OF THE IMPENDING TRIAL DATE.

Movant's answer: Yes

Plaintiffs' answer: Yes

Defendant Secretary of State's Answer: Yes

This Court should answer: Yes

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Rules

Federal Rule of Civil Procedure 6(c)(1)(C)

Cases

Cooey v. Strickland, No. 2:04-CV-1156, 2011 WL 320166, at *1 (S.D. Ohio Jan. 28, 2011)

Galloway v. Chesapeake Union Exempted Vill. Sch. Bd. of Educ., No. 1:11-CV-850, 2014 WL 5460538 (S.D. Ohio Oct. 27, 2014)

Nartron Corp. v. Tuthill Corp., No. 05-70323, 2006 WL 2042609 (E.D. Mich. July 20, 2006)

Sabol-Krutz v. Quad Elecs., Inc., No. 2:15-CV-13328, 2016 WL 6277083 (E.D. Mich. Oct. 27, 2016)

Trial is set to begin in this matter on February 5, 2019. (ECF No. 140). However, Defendants-Intervenors have filed an Emergency Motion to Stay Trial (“Emergency Motion”) based upon the pending Supreme Court decisions in *Common Cause v. Rucho* (Sup. Ct. #18-422) and *Benisek v. Lamone* (Sup. Ct. #18-726). As described in the Emergency Motion, in *Rucho* and *Benisek* the Supreme Court will resolve currently unanswered questions regarding the justiciability, legal standards, factual questions and appropriate remedy in political gerrymandering claims.

Put another way, the Supreme Court’s decisions in *Rucho* and *Benisek* will determine whether this lawsuit should be dismissed, thereby completely obviating the need for trial, or, alternatively, will determine the legal principles to be applied to this case and the appropriate factual questions to be resolved at trial. If the Court is inclined to grant the Emergency Motion—and Defendants-Intervenors believe it should—then an expedited briefing schedule will allow the Court to make a decision sooner and thereby relieve the Parties and the Court of the unnecessary expenditure of time and resources to prepare for trial given that the standard briefing schedule would not expire until the eve of trial.

Under the briefing schedule provided for by Eastern District of Michigan Local Rule 7.1(e)(2), the Emergency Motion would typically not become ripe for a decision until 21 days after its filing, or February 1, 2019. This means the motion

would ordinarily not be decided until, at the earliest, four days before trial is set to begin in this matter. The Parties, in that scenario, would have no choice but to complete all trial preparations before the motion is ripe for a decision by the Court.

Federal Rule of Civil Procedure 6(c)(1)(1), provides the Court with authority to resolve the Emergency Motion sooner.

(1) In General. A written motion and notice of the hearing must be served at least 14 days before the time specified for the hearing, with the following exceptions:

...

(C) when a court order--which a party may, for good cause, apply for ex parte--sets a different time.

Such good cause is shown where a time constraint exists due to an impending trial date. *See Galloway v. Chesapeake Union Exempted Vill. Sch. Bd. of Educ.*, No. 1:11-CV-850, 2014 WL 5460538, at *8 (S.D. Ohio Oct. 27, 2014) (setting four day briefing schedule on motion *in limine* where trial was set to begin in two weeks); *Cooey v. Strickland*, No. 2:04-CV-1156, 2011 WL 320166, at *1 (S.D. Ohio Jan. 28, 2011) (noting expedited briefing on a motion had been ordered in light of an impending trial date); *Nartron Corp. v. Tuthill Corp.*, No. 05-70323, 2006 WL 2042609, at *1 (E.D. Mich. July 20, 2006) (noting expedited briefing was ordered to allow resolution of a motion prior to jury selection); *see also Sabol-Krutz v. Quad Elecs., Inc.*, No. 2:15-CV-13328, 2016 WL 6277083, at *1 (E.D.

Mich. Oct. 27, 2016) (noting expedited briefing on a motion was ordered as a result of “time sensitive issues”).

Good cause exists in the instant cause due to time constraints imposed by the impending trial date. Moreover, Defendants-Intervenors filed this motion in a timely fashion after the Supreme Court recently announced that, in March of 2019, it will consider dispositive issues associated with the gerrymandering claims at issue in this lawsuit.

CONCLUSION

For the foregoing reasons, the Congressional and Legislative Defendants-Intervenors respectfully request the Court grant the motion and order expedited briefing on the simultaneously-filed Emergency Motion To Stay Trial pending the final decisions of the United States Supreme Court in *Common Cause v. Rucho* (Sup. Ct. #18-422) and *Benisek v. Lamone* (Sup. Ct. 18-726).

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Attorneys for Defendants-Intervenors

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Date: January 11, 2019

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all of the parties of record.

CLARK HILL PLC

/s/ Brian D. Shekell